

# **EXHIBIT A**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN E. ABDO, as Trustee of the JOHN E. )  
ABDO TRUST DATED JUNE 11, 2014, ) CASE NO.: 17-cv-00851 TSH  
and JOHN E. ABDO, as Trustee of the )  
JOHN E. ABDO TRUST DATED MARCH )  
15, 1976, )

Plaintiffs, )

vs. )

) Trial date: December 14, 2020

MICHAEL R. FITZSIMMONS, PETER )  
LAI, CHRISTOPHER G. POWER, PETER ) Honorable Magistrate Thomas S. Hixson  
J. GOETNER, CHRISTIAN BORCHER, )  
ERNEST D. DEL, MARC S. YI, JAMES C. )  
PETERS, and SOUHEIL S. BADRAN, )

Defendants. )

RISING TIDE I, LLC; RISING TIDE II, ) CASE NO.: 17-cv-01232 TSH  
LLC, )

Plaintiffs, )

v. )

MICHAEL FITZSIMMONS; PETER LAI; )  
CHRIS G. POWER; PETER J. )  
GOETTNER; CHRISTIAN BORCHER; )  
ERNEST D. DEL; MARC S. YI; JAMES C. )  
PETERS; AND SOUHEIL S. BADRAN, )

Defendants.

---

Expert Witness Report of  
Steven M. Berwick, CPA, CVA, CITP, CFF

May 5, 2020

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

**Table of Contents**

I.	BACKGROUND .....	0
II.	THE ENGAGEMENT .....	1
III.	SUMMARY OF OPINIONS .....	3
IV.	FOUNDATIONS AND BASES FOR OPINIONS.....	3
V.	DATA AND OTHER INFORMATION CONSIDERED .....	16
VI.	PENDING DISCOVERY AND ASSIGNMENT CONTINUATION .....	17
VII.	EXPERT QUALIFICATIONS .....	16
VIII.	EXPERT COMPENSATION .....	17

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

**I. BACKGROUND<sup>1</sup>**

1. Delivery Agent, Inc. (“Delivery Agent” or the “Company”) was an e-commerce company that touted its pioneering development of the burgeoning television-commerce space, known as “t-commerce.” Delivery Agent claimed that it developed interactive technology to connect television viewers to products seen on TV, so that a viewer could instantly purchase those products through their smart TV using the TV’s remote control or another device.
2. The Plaintiffs (collectively “Plaintiffs”) in these matters are John E. Abdo (“Abdo”) as the Trustee of the both the John E. Abdo Trust Dated June 11, 2014 (“Abdo 2014 Trust”) and the John E. Abdo Trust Dated March 15, 1976 (“Abdo 1976 Trust”), Rising Tide I, LLC (“RTT-I”), and Rising Tide II, LLC (“RTT-II”). From June 2014 through April 2016, Delivery Agent issued and sold securities to Plaintiffs in the form of preferred stock, stock warrants, and convertible promissory notes in order to cover a cash-flow shortfall that was purported to be short-term in light of an Initial Public Offering (“IPO”) that Plaintiffs allege they were told was coming soon.
3. Defendant Michael R. Fitzsimmons (“Fitzsimmons”) was Delivery Agent’s Chief Executive Officer and a member of Delivery Agent’s Board of Directors (“BOD”).
4. Defendant Peter Lai was Delivery Agent’s President and Chief Operating Officer until January 2015, and thereafter the President of Ecommerce.

---

<sup>1</sup> This section is intended to reflect my understanding of the general fact pattern of these matters. This section is not intended to represent any expert opinions, legal opinions or findings of facts that are at issue for the trier of fact in these matters.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

5. Defendant Christopher G. Power was a member of Delivery Agent's BOD and was the Chairman of the Audit Committee.
6. Defendant Peter J. Goettner ("Goettner") was a member of Delivery Agent's BOD, a member of the Audit Committee, and a member of the Nominating and Governance Committee.
7. Defendant Christian Borchert ("Borchert") was a member of Delivery Agent's BOD, a member of the Audit Committee, and the Chairman of the Nominating and Governance Committee.
8. Defendant Marc S. Yi ("Yi") was a member of Delivery Agent's BOD and a member of the Nominating and Governance Committee.
9. Defendant Souheil S. Badran was a member of Delivery Agent's BOD during the period of January 2014 through April 2015.
10. Defendant James C. Peters was Delivery Agent's Chief Operating Officer from January 2015 through September 15, 2016 and was a member of Delivery Agent's BOD from December 2014 through September 15, 2016.
11. Defendant Ernest D. Del was a member of Delivery Agent's BOD.
12. On December 15, 2017, Plaintiffs filed First Amended Complaints for Violation of Federal Securities Laws and California Securities Laws ("Complaints") against Defendants in the U.S. District Court for the Northern District of California.

## **II. THE ENGAGEMENT**

13. Kaufman, Rossin & Co. ("KR", "I", or "We") was retained by Plaintiffs' counsel ("Counsel"). We were asked to determine the fair market value of Delivery Agent and the subject securities at the various dates of investment by Plaintiffs. In determining the fair

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

market value, we were asked by Counsel to assume that beginning on March 12, 2014 and throughout the dates of Plaintiffs' investments in Delivery Agent:

- (a) Delivery Agent could not achieve an IPO;
- (b) No investments made by investors unaffiliated with Defendants should be considered as arm's length investments for purposes of determining the fair market value of Delivery Agent and the subject securities;
- (c) Delivery Agent's demonstration of its t-commerce technology at Super Bowl XLVII failed to display properly on certain Samsung smart TV's as intended and did not achieve the number of sales desired by Delivery Agent and its customer H&M; and
- (d) Delivery Agent's interactive t-commerce technology was not commercially viable, either in terms of making Delivery Agent profitable or as constituting an asset with material value.

It is my understanding that the purpose of making these assumptions is to allow a determination of what the fair market value of Delivery Agent and the subject securities would have been on the valuation dates taking into account what Plaintiffs assert were the true facts, i.e., (a) that Delivery Agent could not, in fact, achieve an IPO because of matters allegedly concealed from Plaintiffs, (b) that investors unaffiliated with Defendants (such as Plaintiffs) invested without knowing material facts about Delivery Agent and its prospects, and (c) that the t-commerce technology was not a market-ready technology (and encountered problems in its first-ever test run), as was represented to (or concealed from) Plaintiffs.

- 14. I was asked to prepare an expert report setting forth my opinions and the bases for them. I was not asked to consider any questions of liability and therefore I offer no opinions related to liability.
- 15. I, Steven M. Berwick, a partner of KR, have directed this engagement, and am being offered as an expert witness in this matter.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

### III. SUMMARY OF OPINIONS

16. Based upon my review of the documents and information produced, and the assumptions provided, from June 2104 through April 2016, the equity value of the Company was at all times less than zero.<sup>2</sup> Therefore, taking into account the assumptions set forth herein and considering the material information allegedly misrepresented to and withheld from Plaintiffs, the securities purchased by Plaintiffs between June 18, 2014 and April 20, 2016 were worthless on the dates of purchase.<sup>3</sup>

### IV. GROUNDS AND BASES FOR OPINIONS

17. In formulating my opinions, I reviewed Plaintiffs' Complaints, as well as other documents produced as part of discovery in this matter listed at **Exhibit C** of this report. My opinions have been determined within reasonable certainty.
18. From June 2014 through April 2016, Delivery Agent issued and sold \$18 million of securities to Abdo in the form of preferred stock, stock warrants, and convertible promissory notes. The following table summarizes the securities Delivery Agent sold to Abdo:

Securities Purchased by Plaintiff - Abdo				
Purchase Date	Purchaser	Amount Paid	# of Shares	Security
6/18/14	Abdo 2014 Trust	\$5,000,000	5,504,789	Series F Preferred Stock & Warrants <sup>(1)</sup>
9/24/14	Abdo 2014 Trust	\$5,000,000	5,504,789	Series F Preferred Stock <sup>(2)</sup>
1/13/15	Abdo 2014 Trust	\$5,000,000	5,504,789	Series F Preferred Stock & 120-day Warrant <sup>(3)</sup>
4/20/15	Abdo 1976 Trust	\$1,000,000	1,320,132	Series G Preferred Stock <sup>(4)</sup>
7/21/15	Abdo 1976 Trust	\$1,000,000	N/A	Convertible Promissory Note <sup>(5)</sup>
4/20/16	Abdo 1976 Trust	\$1,000,000	N/A	Convertible Promissory Note <sup>(5)</sup>
		<u>\$18,000,000</u>		

**Footnotes:**

(1) Source: Series F Preferred Stock certificate dated 6/18/14; Bates ABDO000095- ABDO000096 ; Warrant docs ABDO012256-ABDO012263, ABDO012319-ABDO012319, ABDO000327-ABDO000331.

(2) Source: Series F Preferred Stock certificate dated 9/24/14; Bates ABDO005046- ABDO005047.

(3) Source: Series F Preferred Stock certificate dated 1/13/15; Bates LEVAN002929- LEVAN002930; Warrant docs ABDO012256-ABDO012263, ABDO012319-ABDO012319, ABDO000327-ABDO000331.

(4) Source: Series G Preferred Stock certificate dated 4/20/15; Bates ABDO000514-ABDO000515.

(5) Source: Official Form 410, Proof of Claim against Delivery Agent, Inc., by John E. Abdo, dated 1/9/17.

<sup>2</sup> See chart below paragraph 38.

<sup>3</sup> The relevant valuation dates revolve around the investments Plaintiffs made in Delivery Agent from June 2014 through April 2016 ("Valuation Dates").

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

19. From August 2014 through March 2016, Delivery Agent issued and sold \$16.7 million of securities to RCC-I and RCC-II in the form of preferred stock, stock warrants, and convertible promissory notes. The following table summarizes the securities Delivery Agent sold to RCC-I and RCC-II:

Securities Purchased by Plaintiff - Rising Tide				
Purchase Date	Purchaser	Amount Paid	# of Shares	Security
8/25/14	Rising Tide I, LLC	\$10,000,000	11,009,578	Series F (1)
4/20/15	Rising Tide II, LLC	\$2,500,000	3,300,330	Series G (2)
7/21/15	Rising Tide I, LLC	\$3,500,000	N/A	Sub. Notes (3)
3/30/16	Rising Tide I, LLC	\$651,805	N/A	Sub. Notes (4)
		<u>\$16,651,805</u>		
Footnotes:				
(1) Source: Series F Preferred Stock certificate dated 8/25/14 and related Series F. Preferred Stock Purchase Warrant (not Bates stamped).				
(2) Source: Series F Preferred Stock certificate dated 4/20/15 and related Common Stock Purchase Warrant (not Bates stamped).				
(3) Source: Proof of Claim Form 410 dated 10/26/16 and Convertible Promissory Note dated 7/21/15 (not Bates stamped).				
(4) Source: Proof of Claim Form 410 dated 10/26/16 and Convertible Promissory Note dated 3/30/16 (not Bates stamped).				

20. In our determination of the fair market value of Delivery Agent, we followed commonly applied business valuation techniques and we performed a conclusion of value engagement as of the Valuation Dates. We followed the approaches set forth in the SSVS-1,<sup>4</sup> including that we fully considered the circumstances at the Valuation Dates and we did not consider conditions that arose subsequent to the Valuation Dates if that information was not known or knowable.

<sup>4</sup> American Institute of CPA (AICPA)'s Consulting Services Executive Committee. *Statement on Standards for Valuation Services-1 (SSVS No. 1), Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset.*



***Standard of Value***

21. We are using Fair Market Value (“FMV”)<sup>5</sup> as the standard of value.

***Premise of Value***

- (a) The valuator first needs to determine the appropriate premise of value,<sup>6</sup> which can be either “going concern value” or “liquidation value.”<sup>7</sup> Going concern value assumes the company is expected to operate into the future and be profitable. We have determined the Company was not a going concern based on the following factors that existed as of December 31, 2013 and on the Valuation Dates:
  - (b) The Company had never been profitable and had accumulated at least \$146 million of losses;
  - (c) The Company’s liabilities exceed its assets by at least \$25 million on all relevant dates;
  - (d) The Company’s auditors included in their opinions an emphasis of a matter paragraph indicating “substantial doubt” that the Company could continue as a going concern. This is one of the strongest negative cautionary statements an auditor can issue in its audit report; and
  - (e) Counsel has asked us to assume the matters set forth in Paragraphs 13 and 46 herein.
- Based on the above, we have determined liquidation value is the proper premise of value.

***Valuation Approaches***

22. According to SSVS-1, in developing the valuation, the valuation analyst should consider the three most common valuation approaches:<sup>8</sup>

---

<sup>5</sup> Defined in the International Glossary of Business Valuation Terms: **Fair Market Value**—“the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm’s length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

<sup>6</sup> Defined in the International Glossary of Business Valuation Terms: **Premise of Value**—“an assumption regarding the most likely set of transactional circumstances that may be applicable to the subject valuation; e.g. going concern, liquidation.”

<sup>7</sup> Defined in the International Glossary of Business Valuation Terms: **Liquidation Value**— “the net amount that would be realized if the business is terminated and the assets are sold piecemeal. Liquidation can be either ‘orderly’ or ‘forced.’”

<sup>8</sup> SSVS-1, ¶31.

- Income (Income-based) approach (“Income Approach”);<sup>9</sup>
- Asset (Asset-based) approach, or cost approach (“Asset Approach”);<sup>10</sup> and
- Market (Market-based) approach (“Market Approach”).<sup>11</sup>

23. The valuation analyst should use the valuation approaches and methods that are appropriate for the valuation engagement.<sup>12</sup>

### ***Income Approach***

24. The Income Approach includes methods under which the valuator estimates the value of a business based upon expected future cash flows. Two frequently used valuation methods under the Income Approach include the capitalization of benefits method (for example, earnings or cash flows) and the discounted future benefits method, also known as the discounted cash flows (“DCF”), method<sup>13</sup> with a terminal value determined based upon the capitalization of benefits method.

---

<sup>9</sup> Defined in the International Glossary of Business Valuation Terms: **Income Approach** – “a general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more methods that convert anticipated economic benefits into a present single amount.”

<sup>10</sup> Defined in the International Glossary of Business Valuation Terms: **Asset Approach** – “a general way of determining a value indication of a business, business ownership interest, or security using one or more methods based on the value of the assets net of liabilities.”

<sup>11</sup> Defined in the International Glossary of Business Valuation Terms: **Market Approach** – “a general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more methods that compare the subject to similar businesses, business ownership interests, securities, or intangible assets that have been sold.”

<sup>12</sup> SSVS-1, ¶32.

<sup>13</sup> Defined in the International Glossary of Business Valuation Terms: the DCF method is “a method within the income approach whereby the present value of future expected net cash flows is calculated using a discount rate.”

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

25. In considering the use of the Income Approach, we first reviewed the historical income statements through December 31, 2015 (the last financial statement available). The table below summarizes the historical annual losses from 2007 to 2015:

Delivery Agent - Income Statement Summary			
Year	Revenues	Income (Loss) from Operations	Net income (losses)
2007	\$22,569	(\$11,245)	(\$11,245) <sup>(1)</sup>
2008	\$36,020	(11,862)	(11,643) <sup>(1)</sup>
2009	\$56,601	(18,369)	(20,035) <sup>(1)</sup>
2010	\$81,654	(23,379)	(24,288) <sup>(1)</sup>
2011	\$85,275	(21,041)	(23,199) <sup>(1)</sup>
2012	\$91,557	(25,459)	(25,811) <sup>(2)</sup>
2013	\$108,569	(18,141)	(20,967) <sup>(2)</sup>
2014	\$132,985	(34,415)	(43,298) <sup>(3)</sup>
2015	\$175,297	(36,074)	(50,384) <sup>(3)</sup>
<b>Cumulative Net Income (Loss)</b>		<b>(\$129,496)</b>	<b>(230,870)</b>

Footnotes:  
 (1) Source: FSCG Valuation dated July 1, 2014; Bates DEF\_054668.  
 (2) Source: Delivery Agent 2012/2013 Audited Financial Statements; Bates CONNEKT 0432606.  
 (3) Source: Delivery Agent 2014/2015 Audited Financial Statements; Bates GT06662.

26. As can be seen in the table above, over the nine years from 2007 to 2015, Delivery Agent was never able to achieve a profit and accumulated over \$231 million of net losses. Leading up to the first purchase of securities by Abdo (6/18/14) as well as RCC-I and RCC-II (8/25/14), Delivery Agent was projecting continuing losses, including a projected EBITDA<sup>14</sup> loss of over \$13 million for 2014.<sup>15</sup>

<sup>14</sup> EBITDA = Earnings Before Interest Taxes Depreciation and Amortization.

<sup>15</sup> See Delivery Agent BOD 4/29/14 presentation documents; Bates CONNEKT 0654139- CONNEKT 0654192.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

27. Although revenues continued to trend up, the EBITA losses continued to worsen, as reflected in the following chart.<sup>16</sup>



28. In fact, the Company’s auditors concluded that the recurring losses and accumulated deficit raised serious doubt about the Company’s ability to continue a going concern:<sup>17</sup>

KPMG, LLP - Audit Report dated October 18, 2012:<sup>18</sup>

*“As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses and negative cash flows from operations and has an accumulated deficit that raise substantial doubt about its ability to continue as a going concern.”*

Deloitte & Touche, LLP - Audit Report dated February 5, 2014:<sup>19</sup>

*“As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses and negative cash flows from operations and has an*

<sup>16</sup> Source: Delivery Agent 2012/2013 Audited Financial Statements; Bates CONNEKT 0432606 and Delivery Agent 2014/2015 Audited Financial Statements; Bates GT06662.

<sup>17</sup> Defined in the International Glossary of Business Valuation Terms: **Going Concern** – “an ongoing operating business enterprise.”

<sup>18</sup> See KPMG, LLP Independent Auditors Report dated October 18, 2012, for the year January 2, 2012; Bates GT07531-GT07561, specifically GT07532.

<sup>19</sup> See Deloitte Independent Auditors Report dated February 5, 2014, for the year December 31, 2012; Bates DT0000333-DT0000360, specifically DT0000336.

*accumulated deficit that raise substantial doubt about its ability to continue as a going concern.”*

Grant Thornton, LLP - Audit Report dated April 30, 2015:<sup>20</sup>

*“As discussed in Note 1 to the financial statements, the Company has incurred recurring operating losses and negative cash flows from operations, and as of December 31, 2013, had an accumulated deficit of \$146,452,686. These conditions, along with other matters as set forth in Note 1, raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1.”*

29. Grant Thornton, LLP also included a going concern emphasis of a matter paragraph in their audit reports dated August 7, 2015 for the year ended December 31, 2014 and their report dated September 1, 2016 for the year ended December 31, 2015.
30. Based on our determination that liquidation value is the proper premise of value, the history of losses, the projected continuing losses, and the assumptions set forth in Paragraph 13 above, the income approach is not appropriate to value the subject company.

### ***Market Approach***

31. When utilizing a Market Approach, the available methods<sup>21</sup> for valuing a business, business ownership interest, or security are as follows:
  - Guideline Public Company Method – “a method within the market approach whereby market multiples are derived from market prices of stocks of companies that are engaged in the same or similar lines of business and that are actively traded on a free and open market.”
  - Guideline Company Transactions Method<sup>22</sup> – “a method within the market approach whereby pricing multiples are derived from transactions of significant interests in companies engaged in the same or similar lines of business.”
  - Guideline sales of interests in the subject entity – “such as business ownership interests or securities.”

---

<sup>20</sup> See Grant Thornton Independent Auditors Report dated April 30, 2015, for the years ended December 31, 2012 and 2013; Bates CONNEKT 0432601- CONNEKT 0432638, specifically CONNEKT 0432604.

<sup>21</sup> SSVS-1.

<sup>22</sup> Also referred to as the Merger and Acquisition Method.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

32. We performed a search based on Standard Industrial Classification (SIC) for guideline public companies utilizing S&P Capital IQ. We located companies, including the same companies selected in valuations performed for the Company beginning in 2013.<sup>23</sup> However, the vast majority had positive EBITDA, sufficient capital, and none had going concern opinions from their auditors. Accordingly, the guideline public company method is inappropriate to value the Company.
33. We also performed a search based on Standard Industrial Classification (SIC)<sup>24</sup> for guideline transactions from both DealStats®, a product of Business Valuation Resources, and S&P Capital IQ. We did locate a small number of transactions with negative EBITDA or negative equity, but we deemed those not comparable to the Company. Accordingly, the guideline company transactions method is inappropriate to value the Company.
34. In consideration of the historical guideline sales of interests in the Company, we are disregarding the transactions that occurred prior to and after February 2, 2014. For transactions that occurred prior to February 2, 2014, the price or occurrence of these transactions is not informative as to the value of the Company on the Valuation Dates because the issues with the t-commerce technology and the IPO had not yet arisen. For transactions that occurred after February 2, 2014, we are disregarding non-insider transactions pursuant to the assumptions set forth in Paragraph 13, as well as the insiders<sup>25</sup> investments based upon the determination that those transactions were significantly based on the capital needs of the Company in order to maintain its existence and the insiders’

---

<sup>23</sup> See various valuations performed by FSCG.

<sup>24</sup> Plaintiffs will produce the underlying facts and data referenced in Paragraphs 33 and 34 of this Report in electronic form. The format of this data makes it impracticable to disclose it herein or on the Exhibits hereto.

<sup>25</sup> Insiders includes the Worldview funds, the Cardinal funds, Intel Capital, and Digital River.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

desire to avoid conversion into common stock.<sup>26</sup> Therefore, those transactions are not representative of fair market value. Accordingly, the guideline sales of interest in the subject entity method is inappropriate to value the Company.

***Asset Approach***

35. According to SSVS-1, a frequently used method under the Asset Approach is the adjusted net asset method. When using the adjusted net asset method in valuing a business, business ownership interest, or security, the valuation analyst should consider, as appropriate, the following information related to the premise of value:

- Identification of the assets and liabilities;
- Fair Market Value of the assets and liabilities (individually or in the aggregate); and
- Liquidation costs (if applicable).

36. Based on our exclusion of the other valuation approaches and our conclusion that the appropriate premise of value is liquidation rather than going concern, I believe the Asset Approach to be the most appropriate approach to determine the FMV of Delivery Agent.

***Conclusion of Fair Market Value***

37. In evaluating the value of Delivery Agent under an Asset Approach, and pursuant to a liquidation premise of value, I began with a review of its historical balance sheets and those

---

<sup>26</sup> See, e.g., Michael Novelly, CFP, email dated February 14, 2014 to various individuals including Fitzsimmons and Insiders.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

near the Valuation Dates. The following is a summary of Delivery Agent's balance sheets from 2010 to 2015:

Delivery Agent - Balance Sheet Summary (in thousands)						
Description	12/31/10	12/31/11	12/31/12	12/31/13	12/31/14	12/31/15
<b>ASSETS:</b>						
Total current assets	34,287	47,049	26,860	22,350	49,235	49,925
Long term assets	1,964	1,566	2,477	7,379	23,724	27,111
Total assets	36,251	48,615	29,337	29,729	72,959	77,036
<b>LIABILITIES:</b>						
Total current liabilities	38,053	34,813	37,600	50,246	103,069	144,225
Long term debt & other liabilities	0	4,375	2,750	5,289	10,981	14,794
Total liabilities	38,053	39,188	40,350	55,535	114,050	159,019
<b>Current assets less current liabilities</b>	<b>(3,766)</b>	<b>12,236</b>	<b>(10,740)</b>	<b>(27,896)</b>	<b>(53,834)</b>	<b>(94,300)</b>
<b>Total assets less total liabilities</b>	<b>(1,802)</b>	<b>9,427</b>	<b>(11,013)</b>	<b>(25,806)</b>	<b>(41,091)</b>	<b>(81,983)</b>
<b>Footnotes:</b>						
(1) 2010-2011 Source: EY valuation of Delivery Agent dated 8/10/15; Bates LW00174310.						
(2) 2012-2013 Source: Delivery Agent 2012/2013 Audited Financial Statements; Bates CONNEKT 0432605.						
(3) 2014-2015 Source: Delivery Agent 2014/2015 Audited Financial Statements; Bates GT06661.						

38. As can be seen in the table above, from 2010 through 2015, the only year Delivery Agent achieved a positive equity position was 2011 (total assets exceeded total liabilities by \$9.4 million). After 2011, the Company's equity turned increasingly negative, reaching almost negative \$82 million by the end of 2015.
39. The table below is the "adjusted net asset value" of Delivery Agent at December 31, 2013, which has been adjusted for cash infusions that came in between December 2013 and



*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

June 18, 2014 (Plaintiffs' first purchase of securities; initial valuation date).

<b>Delivery Agent, Inc.</b> <b>Adjusted Net Asset Value - December 31, 2013 (in thousands)</b>			
Description	As reported	Adjustments <sup>(3)</sup>	Adjusted
Cash	2,600	7,000	9,600 <sup>(1)</sup>
Accounts receivable	13,562	0	13,562
Prepaid expenses and other	2,299	0	2,299
Inventory, net of obsolescence	3,889	0	3,889
Total current assets	22,350	7,000	29,350
Property and equipment, net	3,396	0	3,396
Goodwill	2,055	0	2,055
Intangible assets, net	1,719	0	1,719
Other assets	209	0	209
Total assets	29,729	7,000	36,729
		0	
Accounts payable	9,800	0	9,800
Accrued expenses and other	21,894	0	21,894
Debt - current portion	10,921	(3,100)	7,821 <sup>(1)</sup>
Deferred revenue	2,661	0	2,661
Due to related parties	1,166	0	1,166
Warrant liability	3,804	(3,804)	0 <sup>(2)</sup>
Total current liabilities	50,246	(6,904)	43,342
		0	0
Long term debt & other liabilities	5,289	0	5,289
Total liabilities	55,535	(6,904)	48,631
Current assets less current liabilities	(27,896)		(13,992)
<b>Total assets less total liabilities</b>	(25,806)		<b>(11,902)</b>
Cumulative losses at December 31, 2013			(146,452)
<u>Footnotes:</u>			
(1) On January 28, 2014 the Company issued additional Series F shares for \$10.1 million - \$3.1 million from conversion of promissory notes and \$7.0 million cash.			
(2) The Warrant liabilities appear to be a value adjustment rather than a cash outlay and therefore we eliminated this liability.			
(3) Does not reflect all adjustments that would be made in a liquidation analysis, such as discounts and liquidation costs.			

40. As discussed above in the consideration of the Income Approach, Delivery Agent had no history of profits and taking into account the assumptions set forth in Paragraph 13 and considering the material information allegedly misrepresented to and withheld from

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

Plaintiffs, no hope for future profits. As reflected in the table above, despite Delivery Agent receiving a \$7 million cash infusion in January 2014, the Company's total liabilities exceeded total assets by almost \$12 million, and its current liabilities exceeded its current assets by almost \$14 million.

41. The insider investors contributed an additional \$2.8 million to the Company in March of 2014. Even with this cash infusion, the Company's liabilities would still have exceeded its assets by more than \$9 million by June 2014 (\$11.9 million - \$2.8 million = \$9.1 million), not considering the additional operating losses which occurred.
42. Additionally, between April of 2015 and March 2016, the insider investors contributed approximately \$8.0 million, as reflected in the chart below.

Insider Investments - Post February 2, 2014					
Purchaser	Security	Date of Purchase	# of Shares	Price per Share	Principal Investment
Worldview Strategic Partners IV, L.P.	Series F	3/18/2014	6,672	0.9083	\$6,060 <sup>(1)</sup>
Worldview Technology International IV, L.P.	Series F	3/18/2014	146,907	0.9083	133,436 <sup>(1)</sup>
Worldview Technology Partners	Series F	3/18/2014	904,263	0.9083	821,342 <sup>(1)</sup>
CVP SBIC, L.P.	Series F	3/18/2014	598,583	0.9083	543,693 <sup>(1)</sup>
Intel Capital Corporation	Series F	3/18/2014	404,932	0.9083	367,800 <sup>(1)</sup>
Worldview Strategic Partners IV, L.P.	Series F	3/27/2014	4,170	0.9083	3,788 <sup>(2)</sup>
Worldview Technology International IV, L.P.	Series F	3/27/2014	91,817	0.9083	83,397 <sup>(2)</sup>
Worldview Technology Partners IV, L.P.	Series F	3/27/2014	565,164	0.9083	513,338 <sup>(2)</sup>
CVP SBIC, L.P.	Series F	3/27/2014	374,114	0.9083	339,808 <sup>(2)</sup>
Subtotal					<b>\$2,812,662</b>
CVP SBIC, L.P.	Series G	4/20/2015	660,000	0.7575	499,950 <sup>(3)</sup>
Worldview Strategic Partners IV, L.P.	Series G	4/20/2015	14,152	0.7575	10,720 <sup>(3)</sup>
Worldview Technology International IV, L.P.	Series G	4/20/2015	311,598	0.7575	236,035 <sup>(3)</sup>
Worldview Technology Partners IV, L.P.	Series G	4/20/2015	1,917,988	0.7575	1,452,876 <sup>(3)</sup>
Intel Capital Corporation	Series G	6/22/2015	792,079	0.7575	600,000 <sup>(4)</sup>
Worldview Technology Partners IV, L.P.	Sub. Notes	7/21/2015			1,275,787 <sup>(5)</sup>
Worldview Technology International IV, L.P.	Sub. Notes	7/21/2015			207,266 <sup>(5)</sup>
Worldview Strategic Partners IV, L.P.	Sub. Notes	7/21/2015			9,414 <sup>(5)</sup>
CVP SBIC, L.P.	Sub. Notes	7/21/2015			815,800 <sup>(5)</sup>
Worldview Strategic Partners IV, L.P.	Sub. Notes	3/30/2016			12,131 <sup>(6)</sup>
Worldview Technology International IV, L.P.	Sub. Notes	3/30/2016			267,081 <sup>(6)</sup>
Worldview Technology Partners IV, L.P.	Sub. Notes	3/30/2016			1,643,968 <sup>(6)</sup>
CVP SBIC, L.P.	Sub. Notes	3/30/2016			905,242 <sup>(6)</sup>
Subtotal					<b>\$7,936,269</b>
Grand Total					<b>\$10,748,931</b>
Footnotes:					
(1) See schedule of Purchasers, March 18, 2014; Bates ABDO012715-ABDO012716.					
(2) See schedule of Purchasers, March 27, 2014; Bates ABDO012717-ABDO012718.					
(3) See schedule of Purchasers, April 20, 2015; Bates CONNEKT 0577235-CONNEKT 0577236.					
(4) See schedule of Schedule of Exceptions; Bates RT0046090-RT0046123 (specifically RT0046110); and Series G Preferred Stock and Warrant Purchase Agreement 4/20/15; Bates RT00446047-RT0046089 (specifically RT0046081).					
(5) See schedule of Purchasers, July 21, 2015; Bates CONNEKT 0304601.					
(6) See schedule of Purchasers, March 30, 2016; Bates CONNEKT 0304602.					

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

43. Therefore, even considering all of the cash infusions from the insider investors, at all Valuation Dates, Delivery Agent was presumed to be insolvent, and therefore the securities Plaintiffs purchased had no value on the dates they were purchased.
44. Assuming no additional cash infusions (other than those from the insiders listed above as generally required to meet the capital needs of the Company and to prevent conversion from preferred to common shares), and continuing losses, it would be improbable for Delivery Agent to not eventually go bankrupt or otherwise go out of business. In fact, on September 15, 2016, Delivery Agent filed for bankruptcy under Chapter 11 of the Bankruptcy Code.<sup>27</sup>

***Treatment of Convertible Promissory Notes in Liquidation***

45. Counsel has instructed us that the convertible promissory notes identified in Paragraphs 18 and 19 would be subordinated to the Company's secured and unsecured debt in a liquidation scenario.

***Conclusion***

46. Taking into account the assumptions set forth herein and considering the material information allegedly misrepresented to and withheld from Plaintiffs, it is my opinion that Delivery Agent had negative value at every Valuation Date and that the Plaintiffs' securities had no value on the dates of purchase.

---

<sup>27</sup> Plaintiff Abdo's last purchase of securities was April 20, 2016 and on September 15, 2016, Delivery Agent filed for bankruptcy under Chapter 11 of the Bankruptcy Code. I believe there was no "subsequent information" during the 5 months leading up to the bankruptcy that was not known or knowable.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

**V. DATA AND OTHER INFORMATION CONSIDERED**

47. In conducting this engagement to date, I have reviewed and/or considered documents and other information provided by Counsel as discussed herein and identified at **Exhibit C**. I have been provided with all documents I requested.

**VI. PENDING DISCOVERY AND ASSIGNMENT CONTINUATION**

48. As discovery is ongoing and additional information is provided to me, my opinions may change, I may have additional opinions and the scope of my assignment may be expanded. Should additional information bearing relevance on my opinions become available, I intend to modify this report as soon as practicable depending upon timing of such discovery.
49. In addition, I may generate demonstrative exhibits for use at trial. KR may also proceed with additional work as may be requested prior to trial.

**VII. EXPERT QUALIFICATIONS**

50. I am a partner with the accounting firm of Kaufman, Rossin & Company, PA, specializing in audit and litigation engagements. I am a Certified Public Accountant, licensed to practice in Florida and a member of the American Institute of Certified Public Accountant, Florida Institute of Certified Public Accountants, and National Association of Certified Valuation Analysts (NACVA). During the last twenty years, I have devoted a significant amount of time to the analysis of complex valuation and business issues in commercial litigation.
51. A profile of my education, professional history, professional affiliations, range of experience and publications authored is attached at **Exhibit A**.
52. **Exhibit B** provides the detail of cases in which I have provided expert testimony at trial, deposition or hearings in the past four years.

*ABDO VS. FITZSIMMONS, et al.*  
Expert Report of Steven M. Berwick, May 5, 2020

**VIII. EXPERT COMPENSATION**

53. Kaufman, Rossin & Co., P.A. is being compensated based upon the various levels of skill and responsibility required at hourly rates ranging from \$125 per hour to \$595 per hour. My hourly rate is \$595. No portion of our fees is contingent upon the outcome of this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Steven Berwick", is written over a horizontal line.

Steven M. Berwick, CPA, CVA, CITP, CFF  
Kaufman, Rossin & Co.  
May 5, 2020

**EXHIBIT A**

## Steven M. Berwick, CPA, CVA, CITP, CFF

### Principal, Kaufman Rossin

305.857.6708 | sberwick@kaufmanrossin.com

### PROFESSIONAL QUALIFICATIONS

Certified Public Accountant (CPA), State of Florida, License No. 7694

American Institute of Certified Public Accountants (AICPA), Member

AICPA Valuation, Forensic Accounting and Litigation Services Section, Member

AICPA Information Technologies Section, Member

Florida Institute of Certified Public Accountants (FICPA), Member

Florida Institute of Certified Public Accountants, Quality Review Committee 1988-1989

FICPA, Accounting Principles and Auditing Standards Committee 1992-1997, Chairman 1995-1997

National Association of Certified Valuation Analysts (NACVA), (CVA) Member

Certified Information Technology Professional (CITP), AICPA

Certified in Financial Forensics (CFF), AICPA

Association of Certified E-Discovery Specialists (ACEDS), Member

Florida International University School of Accounting Advisory Board, Member

### PROFESSIONAL EXPERIENCE

#### Kaufman Rossin | 1974 to present

##### Audit & Litigation Consulting Principal

Steve has extensive experience in lost profit calculations, commercial damage models, construction litigation, professional malpractice matters, and expert witness testimony. He has testified in numerous commercial litigation matters, and has qualified as an expert witness in various federal and state courts throughout the nation.

In addition to litigation consulting, Steve also has significant experience as an auditor with clients in various industries primarily in construction, retail and non-profit entities.

In addition, he has provided litigation consulting services to help companies address various phases of discovery, from evidence identification, preservation and collection to analysis, production and expert testimony.

Steve leads the Firm's technology department, supporting the Firm's growth through innovations that meet the needs of professionals and clients. He was named Technology Leader of the Year (CTO) by the Greater Miami Chamber of Commerce in 2008.

### PROVIDED TESTIMONY AS EXPERT

- United States District Court, Southern District of Florida
- United States District Court, Western District of Kentucky
- Circuit Court, Dade County, Florida
- Circuit Court, Broward County, Florida
- Circuit Court, Palm Beach County, Florida
- Circuit Court, Pinellas County, Florida
- Circuit Court, Pasco County, Florida

### AUTHOR AND LECTURER

- Litigation support services – Business Damages (lecturer)
- Accounting and auditing standards updates (lecturer)
- Accounting and auditing for the Construction Industry (lecturer)
- Financial Statement Disclosures Under SOP 94-6 and FAS 107 (article)
- Auditing Property and Casualty Insurers (article)

### EDUCATION

#### Florida International University, B.B.A. in Accounting

- American Institute of Certified Public Accountants and Florida Institute of Certified Public Accountants Continuing Education Courses
- National Association of Certified Valuation Analysts, Professional Development Program

**EXHIBIT B**



**Four Year Record of Expert Testimony for Steven M. Berwick**

<i>Date</i>	<i>Case</i>	<i>Type of Testimony</i>
7/29/2019	<i>Mayfield Condominium Assoc. v. AG-M Hotel Owner, et. al.</i> , 2018-017095-CA-01, (Fla. 11th Jud. Cir.)	Deposition
5/07/2019	<i>Carolyn at Knightsbridge, LLC v GSRP, LLC</i> , 16-CA-007261 (Fla. 13th Jud. Cir.)	Deposition
2/11/2019	<i>Ramblewood East Condo Assoc. v Hartzell Construction, et al</i> , 062011CA028839AXXXCE (Fla. 17th Jud. Cir.)	Deposition
1/10/2019	<i>GB Auto Service, Inc. v. Morpheus Investment, Inc.</i>	Deposition
1/08/2019	<i>Cannery Row HOA, Inc. v Cannery Row, LLC, et al</i> , 50-2017CA014093-XXXX-MB, (Fla. 15th Jud. Cir.)	Deposition
9/24/2018	<i>Carolyn at Wesbury, LLC v Westbury at Lake Brandon Investments, LLC, et al</i> , Case No. 16-CA-006109 (Fla. 13th Jud. Cir.)	Trial
6/05/2018	<i>Carolyn at Wesbury, LLC v Westbury at Lake Brandon Investments, LLC, et al</i> , Case No. 16-CA-006109 (Fla. 13th Jud. Cir.)	Deposition
4/27/2018	<i>Storati LLC, et al v Corporation Mixproducts LLC, et al</i> , 2014, 027987-CA-01 (Fla. 11th Jud. Cir.)	Deposition
4/04/2018	<i>Timothy Donald, et al v United Soccer Leagues, LLC</i> , 18-cv-01836-MSS-JSS (S.D. Fla.)	Trial
12/08/2017	<i>Zone 4 Energy Limited v JP Morgan and Jorge Delfi</i> , 2015-021879-CA-01 (Fla. 11th Jud. Cir.)	Trial
10/13/2017	<i>Gary Dean v Q Club Hotel, LLC</i> , Case No. 15-cv-60474-JIC (S.D. Fla.)	Deposition
6/28/2017	<i>Zone 4 Energy Limited v JP Morgan and Jorge Delfi</i> , 2015-021879-CA-01 (Fla. 11th Jud. Cir.)	Deposition
5/26/2017	<i>Gary Dean v. Q Club Hotel, LLC</i> , 15-cv-60474-JIC (S.D. Fla.)	Trial
1/12/2017	<i>Lukenda, et al., v. Feldman Sherb &amp; Co., et al.</i> , CA 02-12411-AH (Fla. 15th Jud. Cir.)	Trial
8/03/2016	<i>Raimundo Modia, Jr. Rev Tr v. Banner Life Insurance Company</i> , 15-cv-23501-JG (S.D. Fla.)	Deposition
7/21/2016	<i>Mediware Information Systems, Inc. v. HemaTerra Technologies, LLC, et al.</i> , 13-cv-00103-JRK (M.D. Fla.)	Deposition
5/19/2016	<i>Prime Experience, Inc., et al. v. Vieques Hotel Partners, et al.</i>	Trial
5/19/2016	<i>Prime Experience, Inc., et al. v. Vieques Hotel Partners, et al.</i>	Arbitration

**EXHIBIT C**

Abdo, et al v Fitzsimmons, et al						
DOCUMENT INVENTORY						
Last updated on 5/5/2020						
No.				Document Description	Period	Bates Begin Bates End
I.	Pleadings and Other Legal Documents					
			a.	First Amended Complaint For Violation of Federal Securities Laws and California Securities Laws, John E. Abdo, As Trustee Of The John E. Abdo Trust Dated June 11, 2014, and John E. Abdo, As Trustee Of The John E. Abdo Trust Dated March 15, 1976	12/15/2017	
			b.	First Amended Complaint - Rising Tide I, LLC.; Rising Tide II, LLC	12/15/2017	
II.	Investments					
			a.	Abdo Series F Preferred Stock Certificate - First Purchase	6/18/2014	ABDO000095 ABDO000096
			b.	Abdo Series F Preferred Stock Certificate - Second Purchase	9/24/2014	ABDO005046 ABDO005047
			c.	Abdo Series F Preferred Stock Certificate - Third Purchase	1/13/2015	LEVAN002929 LEVAN002930
			d.	Abdo Series G Preferred Stock Certificate	4/20/2015	ABDO000514 ABDO000515
			e.	Abdo Proof of Claim	1/12/2017	n/a
			f.	Correspondence regarding Stock Certificates	9/23/2014	ABDO012256 ABDO012260
			g.	Series F Preferred Stock Purchase Warrant	6/11/2014	ABDO012319 ABDO012328
			h.	Amendment to 120-day Warrant	9/1/2014	ABDO012261 ABDO012263
			i.	Correspondence regarding 120-day warrant	1/9/2015	ABDO000327 ABDO000330
			j.	Purchase/exercise form - Exhibit A	1/9/2015	ABDO000331 ABDO000331
			k.	Schedule of Purchasers - Exhibit A	1/28/2014	ABDO12712 ABDO12712
			l.	Schedule of Purchasers - Exhibit A	4/20/2015	CONNEKT 0577235 CONNEKT 0577236
			m.	Schedule of Purchasers - Exhibit A	3/30/2016	CONNEKT 0304600 CONNEKT 0304602
III.	Business Documents					
	A. <u>cy Agent, Inc.</u>					
	1	Corporate Documents				
			a.	Twelfth Restated Certificate of Corporation	1/28/2014	GT00863 GT00893
			b.	Eleventh Restated Certificate of Corporation	7/31/2013	GT00788 GT00817
			c.	Certificate of Amendment to the 12th Amended Certificate of Corporation	9/24/2014	CONNEKT 0597304 CONNEKT 0597308
			d.	Meeting Minutes	10/28/2014	CONNEKT 0597309 CONNEKT 0597313
			e.	Credit Suisse - Project Hollywood Drafting Session #11, S-1 Business Section Draft	2014	GT07622 GT07631
			f.	Draft S-1 except provided to plaintiff on May 12, 2014	5/12/2014	ABDO000033 ABDO000040
			g.	Draft S-1 except provided to plaintiff on Jan. 7, 2015	1/7/2015	LEVAN002251 LEVAN002268
			h.	Credit Suisse Comparables Update	1/9/2015	CONNEKT 0597319 CONNEKT 0597323
			i.	Letter from Latham & Watkins re Capitalization Information as of 12/31/15	2/11/2016	GT01091 GT01092
			j.	Letter from Latham & Watkins re Capitalization Information as of 12/31/14	4/22/2015	GT00241 GT00242
			h.	Purchase Documents - Post Superbowl	7/1/2014	HLI Del Agent 006207 HLI Del Agent 006464
	2	Board of Directors Meeting Presentations				
			a.	Board of Directors Meeting Presentations	4/19/2016	CONNEKT 0099481 CONNEKT 0099527
			b.	Board of Directors Meeting Presentations	2/2/2016	CONNEKT 0438016 CONNEKT0438048
			c.	Board of Directors Meeting Presentations	10/27/2015	CONNEKT 0119887 CONNEKT 0119941
			d.	Board of Directors Meeting Presentations	7/28/2015	CONNEKT 0287623 CONNEKT 0287665
			e.	Board of Directors Meeting Presentations	7/5/2015	DEF_002543 DEF_002556
			f.	Board of Directors Meeting Presentations	4/28/2015	DEF_000249 DEF_000281
			g.	Board of Directors Meeting Presentations	2/3/2015	DEF_000213 DEF_000248
			h.	Board of Directors Meeting Presentations	10/28/2014	DEF_001494 DEF_001542
			i.	Board of Directors Meeting Presentations	7/29/2014	DEF_022417 DEF_022462
			j.	Board of Directors Meeting Presentations	4/29/2014	CONNEKT 0654139 CONNEKT 0654192
			k.	Board of Directors Meeting Presentations	2/14/2014	DEF_004008 DEF_004039
			l.	Compensation Committee Presentation	7/28/2015	CONNEKT 0491676 CONNEKT 0491687
			m.	Comparable Company Update Presentation	1/15	CONNEKT 0597316 CONNEKT 0597318
	3	Historical Financial Statements				
			a.	Audited Consolidated Financial Statements prepared by Grant Thornton LLP for the years ended December 31	2014-2015	GT06657 GT06709
			b.	Audited Consolidated Financial Statements prepared by Grant Thornton LLP for the years ended December 31	2013-2014	GT06566 GT06613
			c.	Audited Consolidated Financial Statements prepared by Grant Thornton LLP for the years ended December 31	2012-2013	CONNEKT 0432601 CONNEKT 0432638
			d.	Audited Consolidated Financial Statements prepared by Deloitte LLP for the years ended December 31	2012	DT0000333 DT0000360
			e.	Audited Consolidated Financial Statements prepared by KPMG for the years ended January 2	2011-2012	GT07531 GT07561
			f.	Internally Prepared financial statements - month end close (Excel)	12/31/2014	Native
			g.	Internally Prepared financial statements - monthly (Excel)	2013	Native

Abdo, et al v Fitzsimmons, et al						
DOCUMENT INVENTORY						
Last updated on 5/5/2020						
No.			Document Description	Period	Bates Begin	Bates End
	4	<b>Forecasted Financial Statements</b>				
		a.	Forecasted Financial Statements (Excel)	2016-2017, 2014-2017	Native	
		b.	Forecasted Financial Statements - Shop TV (Excel)	2015-2017	Native	
		c.	Forecasted Financial Statements (Excel)	2014-2015	Native	
		d.	Forecasted Financial Statements (Excel)	2012-2015	Native	
		e.	Forecasted Financial Statements	2012-2016	CONNEKT 0545227	
		f.	Forecasted Financial Statements	2016-2017	Native	
		g.	Forecasted Financial Statements	2015-2017	Native	
		h.	Forecasted Financial Statements prepared by Ernst & Young, LLP	2015-2021	CONNEKT 0528853	CONNEKT 0528854
	5	<b>Presentations to the Audit Committee</b>				
		c.	Presentation to the Audit Committee prepared by Grant Thornton 4/28/15	2012 & 2013	CONNEKT 0488554	CONNEKT 0488574
		a.	Presentation to the Audit Committee prepared by Grant Thornton 7/29/16	2015	CONNEKT 0299393	CONNEKT 0299426
		b.	Presentation to the Audit Committee prepared by Grant Thornton 7/28/15	2014-Q1-15	CONNEKT 0491789	CONNEKT 0491828
	6	<b>Previous Valuations</b>				
		<b>A.</b>	<b>Valuation Reports</b>			
		1	Valuation Analysis prepared by BTIG	5/15	BTIGAbdo_001191	BTIGAbdo_001203
		2	Valuation Report prepared by FSCG	9/30/2014	GT00624	GT00678
		3	Valuation Report prepared by FSCG	7/1/2014	LW00428367	LW00428422
		4	Valuation Report prepared by FSCG	3/31/2014	GT00538	GT00567
		5	Valuation Report prepared by FSCG	12/3/2013	GT00508	GT00537
		6	Valuation Report prepared by FSCG	9/16/2013	GT00451	GT00507
		7	Valuation Report prepared by FSCG	5/31/2013	GT00395	GT00450
		8	Valuation Report prepared by FSCG	2/15/2013	GT00338	GT00394
		9	Valuation Report prepared by FSCG	7/31/2012	GT00284	GT00337
		<b>B.</b>	<b>Memos</b>			
		1	Review Program for Equity Allocation Using the Option-Pricing Method prepared by Grant Thornton LLP, Valuation Dates: July 31, 2012, February 15, 2013, May 31, 2013, September 16, 2013, December 3, 2013, March 31, 2014, July 1, 2014, and September 30, 2014	2012-2014	GT00679	GT00713
		2	Valuation Review Memo prepared by Grant Thornton LLP - re 12/31/14 Audit	5/14/15	GT00084	GT00231
		3	Memorandum prepared by Grant Thornton LLP re 12/31/14 Audit	12/3/14	GT00237	GT00240
		4	Equity Allocation Memo prepared by Grant Thornton LLP re 2012 and 2014 Audit	2/27/15	GT00281	GT00283
		5	Bridge Note Memo prepared by Delivery Agent VP Controller	7/21/15	GT01194	GT01198
		6	Hillair Debt Memo 12/9/15, prepared by Delivery Agent VP Controller	2/24/2016	GT01204	GT01209
		7	Embedded Derivative Memo prepared by Delivery Agent VP Controller re 12/31/15 financial statements	8/31/2016	GT01256	GT01272
		8	Equity Allocation Memo prepared by Grant Thornton LLP 9/30/2015, 12/30/2015	4/6/2016	GT01273	GT01275
		9	Review Program for Equity Allocation Using the Option-Pricing Method prepared by Grant Thornton LLP	12/31/2015	GT01356	GT01382
		10	Review Program for Equity Allocation Using the Option-Pricing Method prepared by Grant Thornton LLP	9/30/2015	GT01539	GT01565
		11	Valuation Review Memo prepared by Grant Thornton LLP re 12/31/14 Audit	5/14/2015	GT00084	GT00231
		<b>C.</b>	<b>Purchase Price Allocations</b>			
		1	Purchase Price Allocation for Acquisition of Certain Assets of Music Today prepared by FSCG	7/1/2014	CONNEKT 0138129	CONNEKT 0138169
		2	Purchase Price Allocation for Acquisition of Certain Assets of Clean Fun Promotional Marketing prepared by FSCG	9/13/2013	CONNEKT 0138170	CONNEKT 0138203
		<b>D.</b>	<b>409A Valuations</b>			
		1	409A Valuation Report prepared by Ernst & Young, LLP	1/15/2016	CONNEKT 0446459	CONNEKT 0446513
		2	409A Valuation Report prepared by Ernst & Young, LLP	12/31/2015	CONNEKT 0384445	CONNEKT 0384546
		3	409A Valuation Report prepared by Ernst & Young, LLP	9/30/2015	CONNEKT 0384547	CONNEKT 0384649
		4	409A Valuation Report prepared by Ernst & Young, LLP	6/30/2015	CONNEKT 0432313	CONNEKT 0432415
		5	409A Valuation Report prepared by Ernst & Young, LLP	3/31/2015	LW00174230	LW00174326
		6	409A Valuation Report prepared by Ernst & Young, LLP	12/31/2014	CONNEKT 0471865	CONNEKT 0471889
		7	409A Valuation Report prepared by FSCG	12/31/2014	CONNEKT 0552993	CONNEKT 0553049
		8	409A Valuation Report prepared by FSCG	9/30/2014	CONNEKT 0596903	CONNEKT 0596957
		9	409A Valuation Report prepared by FSCG	7/1/2014	DEF_054667	DEF_054723
		10	409A Valuation Report prepared by FSCG	3/31/2014	DEF_053650	DEF_053679
		11	409A Valuation Report prepared by FSCG	12/3/2013	BTIGAbdo_000556	BTIGAbdo_000571
		12	409A Valuation Report prepared by FSCG	9/16/2013	BTIGAbdo_000572	BTIGAbdo_000625
		13	409A Valuation Report prepared by FSCG	2/15/2013	BTIGAbdo_000386	BTIGAbdo_000442
		14	409A Valuation Report prepared by FSCG	1/2/2011	BTIGAbdo_000503	BTIGAbdo_000555
		15	409A Valuation Report prepared by FSCG	7/31/2012	BTIGAbdo_000332	BTIGAbdo_000385

Abdo, et al v Fitzsimmons, et al						
DOCUMENT INVENTORY						
Last updated on 5/5/2020						
No.			Document Description	Period	Bates Begin	Bates End
	E.	Summaries of 409A analyses and other valuations				
		1	Draft Summary of Analysis prepared by Ernst & Young, LLP	4/20/2015	CONNEKT 0577576	
		2	Draft Summary of Analysis prepared by Ernst & Young, LLP	4/21/2015	CONNEKT 0577282	CONNEKT 0577293
		3	Draft Summary of Analysis prepared by Ernst & Young, LLP	6/30/2014	CONNEKT 0577294	CONNEKT 0577309
		4	Draft Summary of Analysis prepared by Ernst & Young, LLP	9/30/2014	CONNEKT 0577310	CONNEKT 0577325
		5	Draft Summary of Analysis prepared by Ernst & Young, LLP	12/31/2014	CONNEKT 0577326	CONNEKT 0577341
		6	Draft Summary of Analysis prepared by Ernst & Young, LLP	3/31/2014	CONNEKT 0541234	CONNEKT 0541245
		7	Draft Summary of Analysis prepared by Ernst & Young, LLP	6/30/2014	CONNEKT 0541246	CONNEKT 0541261
		8	Draft Summary of Analysis prepared by Ernst & Young, LLP	9/30/2014	CONNEKT 0541262	CONNEKT 0541277
		9	Draft Summary of Analysis prepared by Ernst & Young, LLP	12/31/2014	CONNEKT 0541278	CONNEKT 0541293
		10	Draft Summary of Analysis prepared by Ernst & Young, LLP	5/31/2015	GT01308	GT01355
		11	Draft Summary of Analysis prepared by Ernst & Young, LLP	6/16/2015	CONNEKT 0489003	
		12	Draft Summary of Analysis prepared by Ernst & Young, LLP	6/16/2015	CONNEKT 0533925	
		13	Draft Summary of Analysis prepared by Ernst & Young, LLP	3/15/2005	CONNEKT 0533926	CONNEKT 0533968
		14	Draft Summary of Analysis prepared by Ernst & Young, LLP	6/30/2015	CONNEKT 0488955	CONNEKT 0489002
		15	Draft Summary of Analysis prepared by Ernst & Young, LLP	7/21/15 and 12/31/15	CONNEKT 0388891	CONNEKT 0388897
		16	ASC 805 Valuation of Certain Assets Acquired of Target Corporation Valuation Summary	12/31/2015	GT01409	GT01435
	F.	Shadow Calculations				
		1	Shadow Calculations	7/31/2012	GT00894	GT00910
		2	Shadow Calculations	2/15/2013	GT00911	GT00927
		3	Shadow Calculations	5/31/2013	GT00928	GT00945
		4	Shadow Calculations	9/16/2013	GT00946	GT00963
		5	Shadow Calculations - Sensitivity Analysis	12/3/2013	GT00964	GT00981
		6	Shadow Calculations - Sensitivity Analysis	3/31/2014	GT00982	GT00999
		7	Shadow Calculations	7/1/2014	GT01000	GT01017
		8	Shadow Calculations	9/30/2014	GT01018	GT01036
	G.	Supplemental Information				
		1	Common Stock Valuation - workpapers	12/3/2013	GT00764	GT00787
		2	Common Stock Valuation - workpapers	3/31/2014	GT00818	GT00840
		3	Common Stock Valuation - workpapers	12/31/2014	CONNEKT 0150336	CONNEKT 0150337
		4	Common Stock Valuation - workpapers	9/30/2014	CONNEKT 0340826	CONNEKT 0340847
		5	Common Stock Valuation - workpapers	3/18/2014	CONNEKT 0346887	CONNEKT 0346893
		6	Common Stock Valuation - workpapers	9/16/2013	CONNEKT 0349010	CONNEKT 0349029
		7	Draft Valuation of Embedded Derivative of the \$11mln Convertible Promissory Note	7/21/2015, 12/31/2015	CONNEKT 0388699	CONNEKT 0388705
		8	409a Projections Reasonableness (Excel)	2012-2013	Native	
		9	Consolidated Financial Statements (Excel)	12/31/2016	Native	
		10	Consolidated Financial Statements (Excel)	12/31/2014-12/31/2015	Native	
		11	Capitalization Table as issued & converted (Excel)	12/31/2014	Native	
		12	Weighted Average Option Cost Computation (Excel)	12/31/2014	Native	
		13	Option Exercises (Excel)	12/31/2014	Native	
		14	Forecasted Financial Statements - Music Today (Excel)	2014-2018	Native	
		15	Convertible Securities Valuation (Excel)	12/31/2015	Native	
		16	Series F Warrants Calculation	2014	CONNEKT 0522966	
		17	409A Summary of Assumptions & Inputs(prepared by EY)	2014	CONNEKT 0566838	
		18	Recommendations of Value for Convertible Promissory Notes	9/30/2015-12/31/2015	GT01388	
		19	Corroborative Calculations of the Equity Securities prepared by Grant Thornton	12/31/2015	GT01389	GT01408
		20	Corroborative Calculations of the Equity Securities prepared by Grant Thornton	9/30/2015	GT01591	GT01621
		21	Corroborative Calculations of the Equity Securities prepared by Grant Thornton	9/30/2015	GT01571	GT01590
		22	Draft 409A Valuation Exhibits Prepared by EY	9/30/2015	GT01436	GT01483
		23	Draft 409A Valuation Exhibits Prepared by EY	9/30/2015	GT01484	GT01538
	I.	Delivery Agent 409a Projections Reasonableness 2012 and 2013				
		a.	409a Projections Reasonableness (Excel)	2012 - 2014		
		b.	409a Projections Reasonableness	2012 - 2017	GT00842	GT00852
		c.	EXCEL SPREADSHEET - PRODUCED NATIVELY	2014	GT00853	
		d.	EXCEL SPREADSHEET - PRODUCED NATIVELY	2012-2014	GT00855	
	II.	Consolidation FS worksheets DA and The Band - 12/31/12 as of 10/21/13				
		a.	Consolidation FS worksheets DA and The Band (Excel)	12/31/2012-10/21/13		
	III.	Consolidation FS worksheets DA The Band and Clean Fun - 1213 v8				
		a.	Consolidation FS worksheets DA the Band and Clean Fun (Excel)	12/1/2013		
		b.	Balance Sheet Trended by Month and (and Excel)	2013 - 2014	GT00858	GT00858
		c.	Balance Sheet Trended by Month (and Excel)	2013 - 2014	GT00859	GT00859
		d.	Historical cap tables (and Excel)	2013 - 2014	GT00860	GT00862

Abdo, et al v Fitzsimmons, et al						
DOCUMENT INVENTORY						
Last updated on 5/5/2020						
No.			Document Description	Period	Bates Begin	Bates End
	H.	Previous Valuations Review Questions				
		1	Review questions internal prepared by Grant Thornton, LLP (1.0 - 8.0) and Review questions appraiser with responses prepared by Grant Thornton, LLP (1.1 - 8.1)	7/12 - 9/14	GT00714	GT00762
		2	Review questions appraiser prepared by Grant Thornton, LLP	9/30/2015-12/31/2015	GT01383	GT01387
		3	Review questions appraiser prepared by Grant Thornton, LLP	9/30/2015-12/31/2015	GT01566	GT01570
		4	Review questions appraiser prepared by Grant Thornton, LLP	5/31/2013	CONNEKT 0594599	CONNEKT 0594603
		5	Review questions appraiser prepared by Grant Thornton, LLP	3/31/2014	CONNEKT 0594604	CONNEKT 0594607
		6	Review questions appraiser prepared by Grant Thornton, LLP	5/31/2013	CONNEKT 0594608	CONNEKT 0594612
	7	Loan Documents				
		a.	Loan And Security Agreement with Clean Fun Promotional Marketing, Inc. and Pinnacle Ventures, LLC	6/5/2014	BARC_00016441	BARC_00016485
		b.	Pinnacle Payoff Letter	12/9/2015	LW00071492	LW00071503
		c.	Correspondence regarding Pinnacle wire confirmation	12/9/15 - 12/21/15	LW00037270	LW00037272
		d.	Pinnacle Ventures - UCC Financing Statement Amendment - Termination 1	12/9/2015	LW00037273	
		e.	Pinnacle Ventures - UCC Financing Statement Amendment - Termination 2	12/9/2015	LW00037274	
		f.	Pinnacle Ventures - UCC Financing Statement Amendment - Termination 3	12/10/2015	LW00037275	
		g.	Hillair Capital Investments - 8% Original Issue Discount Convertible Debenture due 11/1/17	12/9/2015	CONNEKT 0439082	CONNEKT 0439109
	B.	Rising Tide Investments				
		1	Delivery Agent, Inc. - Financing History (Excel)	Various	Native	n/a
		2	Security Purchases by Defendants' Funds and Companies (Word)	3/05 - 3/16		
		3	Schedule of Purchasers - Exhibit A	1/28/2014	RT0004398	RT0004406
		4	Delivery Agent, Inc. - Series Preferred Stock and Warrant Purchase Agreement	4/20/2015	RT004607	RT0046089
		5	Exhibit G - Schedule of Exception (Complaint supporting documents)	7/22/2015	RT0046090	RT0046123
		6	Exhibit A - Schedule of Purchasers	3/30/2016	CONNEKT 034600	CONNEKT 034602
		7	Delivery Agent Inc. Series G Preferred Stock Certificate for Rising Tide II, LLC (3,300,330 shares) and Common Stock Purchase Warrant	4/20/2015	n/a	
		8	Proof of Claim - Rising Tide I, LLC	10/26/2016	n/a	
		9	Proof of Claim - Rising Tide II, LLC	10/26/2016	n/a	
		10	Letter to Rising Tide I, LLC (a) Series F Stock Certificate (11,009,578 shares) and Warrants	8/25/2014	n/a	
		11	Assignment Separate From Certificate	10/6/2014	LW00025000	
	V.	Correspondence				
		1	Email from G. Ansel to J. Lawlor, with attachment	11/12/2013	CONNEKT 0349008	
		2	Email from T. Goldman to M. Novelly, et al., with attachment	4/4/2014	CONNEKT 0346886	
		3	Email from M. Fitzsimmons to A. Garcia-Lopez, with attachments	6/4/2014	GT07529; GT07531; GT07562; GT07589; GT07622	
		4	Email from G. Ansel to M. Fitzsimmons	6/22/2014	CONNEKT 0066623	
		5	Email from J. Lawlor to A. Garcia-Lopez, with attachments	7/16/2014	GT08201; GT08204; GT08231; GT08232; GT08233; GT08237; GT08256	
		6	Email from J. Hagan to PVPportfolio, with attachment	4/8/2015	CONNEKT 0552992	
		7	Email from G. Ansel to T. Goldman, et al.	7/23/2014	CONNEKT 0345056	
		8	Email from T. Goldman to G. Ansel	10/16/2014	CONNEKT 0058296	
		9	Email from T. Goldman to G. Ansel, with attachment	10/16/2014	CONNEKT 0339769	
		10	Email from G. Ansel to M. Novelly and T. Goldman, with attachment	10/23/2014	CONNEKT 0340824	
		11	Email from T. Goldman to M. Fitzsimmons	10/24/2014	CONNEKT 0341123	
		12	Email from L. Lara to G. Ansel, with attachments	12/3/2014	CONNEKT 0594598	
		13	Email from L. Lara to J. Hagan	12/3/2014	CONNEKT 0594588	
		14	Email from T. Goldman to G. Ansel	1/13/2015	CONNEKT 0151681	
		15	Email from T. Goldman to G. Ansel, with attachments	1/23/2015	CONNEKT 0597299	
		16	Email from G. Ansel to T. Goldman, with attachment	2/13/2015	CONNEKT 0150335	
		17	Email from G. Ansel to L. Lara, with attachment	2/19/2015	CONNEKT 0545225	
		18	Email from A. Di Vita to T. Goldman, with attachments	2/24/2015	CONNEKT 0148899	
		19	Email from J. Russell to L. Lara, with attachments	3/13/2015	CONNEKT 0545223	
		20	Email from L. Lara to J. Hagan	4/1/2015	CONNEKT 0543530	
		21	Email from Z. Biddle to L. Lara, et al., with attachment	4/6/2015	CONNEKT 0566837	
		22	Email from Z. Biddle to L. Lara	5/29/2015	CONNEKT 0523057	
		23	Email from Z. Biddle to L. Lara, with attachment	6/1/2015	CONNEKT 0135542	
		24	Email from Z. Biddle to L. Lara, with attachment	6/2/2015	CONNEKT 0522964	
		25	Email from A. Niemi to L. Lara and Z. Biddle, with attachment	6/12/2015	CONNEKT 0528849	
		26	Email from Z. Biddle to L. Lara	7/1/2015	CONNEKT 0524155	
		27	Email from T. Goldman to J. Williams, with attachments	7/28/2015	CONNEKT 0491673	
		28	Email from L. Ngai to T. Goldman, et al., with attachment	1/26/2016	CONNEKT 0446456	
		29	Email from J. Hagan to L. Ngai, with attachment	4/11/2016	CONNEKT 0408551	
		30	Email from L. Ngai to R. Field, et al., with attachment	6/17/2016	CONNEKT 0396418	
		31	Email from L. Ngai to J. Hagan, with attachment	6/27/2016	CONNEKT 0388889	
		32	Email from R. Feild (EA) to P. Dulay, et al., with attachments	7/27/2016	GT07645; GT07646; GT07647; GT07648	
		33	Email from L. Lara to L. Brown, with attachments	5/4/2015	CONNEKT 0541233	
		34	Email from L. Lara to J. Williams, with attachment	8/10/2015	LW00174227	
		35	Email from Z. Biddle to L. Lara, et al., with attachments	4/21/2015	CONNEKT 0577281	
		36	Email from L. Ngai to J. Hagan, with attachment	6/27/2016	CONNEKT 0388889	
		37	Email from M. Smith to M. Fitzsimmons, et al.	2/11/2013	BARC_000005720	
		38	Email from J. Williams to J. Abdo, with attachments	9/24/2014	Abdo012256	
		39	Email from J. Williams to E. Erb	6/27/2014	LW00357689	
		40	Email from J. Williams to K. Crudden, with attachment	7/23/2015	CONNEKT0522170	
		41	Email from J. Williams to K. Crudden, with attachment	9/4/2015	LW00069318	
	V.	Miscellaneous and Additional Documents				

Abdo, et al v Fitzsimmons, et al							
DOCUMENT INVENTORY							
Last updated on 5/5/2020							
No.				Document Description	Period	Bates Begin	Bates End
			1	Exhibit 00161 - Printed email from M. Novelly re: Series F. Update and Request to Fund	2/14/2014	DR_0008748	DR_0008751
			2	Post-Super Bowl Investments (Excel)	2/2/2014		
			3	Exhibit 00161 - M. Novelly DR_0008748	2/14/2014	DR_0008748, DR_0008751	DR_0008749
			4	Valuation Analysis as of July 1, 2014	7/22/2014	GT00568	
			5	Valuation Review Questions – Appraiser	7/31/2012	GT00716	
			6	Valuation Review Questions – Internal	2.15.2013	GT00720	
			7	Valuation Review Questions – Appraiser	5/31/2013	GT00729	
			8	Valuation Review Questions – Internal	9/16/2013	GT00734	
			9	Valuation Review Questions – Appraiser	9/16/2013	GT00736	
			10	Valuation Review Questions – Internal	12/3/2013	GT00739	
			11	Valuation Review Questions – Appraiser	12/3/2013	GT00740	
			12	Valuation Review Questions – Internal	3.31.2014	GT00745	
			13	Valuation Review Questions – Appraiser	3.31.2014	GT00746	
			14	Valuation Review Questions – Internal	7.1.2014	GT00751	
			15	Valuation Review Questions – Appraiser	7.1.2014	GT00753	
			16	Valuation Review Questions – Internal	9.1.2014	GT00758	
			17	Valuation Review Questions – Appraiser	9.1.2014	GT00760	
			18	Consolidation FS worksheets DA and The Band	10/27/2014	GT00763	
			19	Delivery Agent 409a Projections Reasonableness 2012 and 2013	2/26/2015	GT00841	
			20	Delivery Agent 409a Projections Reasonableness 2012_2013_2014	Undated	GT00842	
			21	Delivery Agent Historical cap tables for 409a	10/16/2014	GT00854	
			22	G-1 Consolidation FS worksheets DA and The Band - 1212 as of 102113	10/27/2014	GT00856	
			23	G-1 Consolidation FS worksheets DA The Band and Clean Fu	9/2/2014	GT00857	
			24	Historical cap tables_July 2014	10/16/2014	GT00861	
			25	Historical cap tables_Sep_2014	10/16/2014	GT00862	
			26	ASC 718 / 409a Valuation	2/22/2016	GT01308	
			27	Recommendation of Value of Certain Securities Issued by Delivery Agent as of 30 September 2015	1/15/2016	GT01484	
			28	Corroborative Calculations of the Equity Securities of Delivery Agent, Inc.	9/30/2015	GT01591	
			29	Delivery Agent 409a Projections Reasonableness 2012 and 2013	2/26/2015	GT00841	
			30	Delivery Agent 409a Projections Reasonableness 2012_2013_2014	Undated	GT00842	
			31	Delivery Agent 409A Projections Reasonableness Q1'1	10/13/2016	GT01093	
			32	Summary of Analysis	3/31/2015	Connekt 0533925	
			33	Summary of Analysis	9/1/2015	Connekt 0489003	
			34	2016.09.08 - Project Daze - ShopTV Advanced Ad P	9/8/2016	Connekt 0085287	
			35	Advanced revenue graph	10/22/2015	Connekt 0006754	
			36	Ad Hoc - ShopTV PL with Inputs from (12Oct16) Optimized Model - 20161019	10/19/2016	Connekt 0078652	
			37	Amended and Restated Convertible Note Purchase Agreement	3/30/2016	CONNEKT 0304578	
			38	Financing History Summary - 22Jul15	6/18/2015	BTIG_DA_0009846	
			39	Series F Preferred Stock and Warrant Purchase Agreement	1/28/2014	ABDO040574	
			40	Certificate of Secretary of Delivery Agent Inc.	3/20/2015	CONNEKT0570613	
			41	Amended and Restated Voting Agreement	3/20/2015	CONNEKT0576612	